

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Bky. Case No. 09-50779
Chapter 7

Dennis E. Hecker,

Debtor.

Randall L. Seaver, Trustee,

Adv. Case No. 10-05011

Plaintiff,

v.

Northstate Financial Corporation,
Rosedale Leasing, LLC, and Bremer Bank, N.A.

Defendants.

Bremer Bank, N.A.,

Cross-Claim Plaintiff,

v.

Northstate Financial Corporation,

Cross-Claim Defendant

**APPLICATION FOR DEFAULT JUDGMENT AGAINST CROSS-CLAIM
DEFENDANT NORTHSTATE FINANCIAL CORPORATION**

TO: NORTHSTATE FINANCIAL CORPORATION AND THE COURT.

1. Cross-claim plaintiff Bremer Bank, N.A., by and through its undersigned counsel, hereby applies pursuant to Local Rule 7055-1 for entry of default judgment against cross-claim defendant Northstate Financial Corporation in the above-captioned adversary proceeding.
2. The bank applies for entry of default judgment (a) adjudging and decreeing that Northstate owes the bank an amount equal to the sums due under those certain loan documents specifically identified in the bank's cross-claim, including without limitation collection costs,

attorneys' fees and costs, default interest and late charges and awarding the bank a judgment against Northstate in such amount; and (b) entitling the bank, upon request, to an order for claim and delivery as to Northstate.

3. This application is based upon the declaration of Jacob B. Sellers and the exhibits thereto, Fed. R. Bankr. 7055, and upon all of the files, records, and proceedings herein.

Dated: July 16, 2010

WINTHROP & WEINSTINE, P.A.

By: s/Jacob B. Sellers
Daniel C. Beck, #192053
Jacob B. Sellers #348879

225 South Sixth Street, Suite 3500
Minneapolis, MN 55402-4629
(612) 612-6400

Attorneys for Defendant Bremer Bank, N.A.

5276492v1

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**DECLARATION OF JACOB B. SELLERS IN SUPPORT OF CROSS-CLAIM
PLAINTIFF'S APPLICATION FOR DEFAULT JUDGMENT**

Jacob B. Sellers declares under penalty of perjury as follows:

1. I am an attorney with the law firm of Winthrop & Weinstine, P.A. I am one of the attorneys representing Bremer Bank, N.A., in connection with the above-captioned action. I submit this declaration in support of the bank's application for default judgment against cross-claim defendant Northstate Financial Corporation and based upon my personal knowledge.

A. **NORTHSTATE'S DEFAULT**

2. This adversary proceeding was commenced on March 17, 2010, by Randall L. Seaver in his capacity as trustee of the above-captioned debtor. On March 25, 2010, the trustee filed an amended complaint . (*See Doc. No. 4.*)

3. On April 16, 2010, the bank filed and served its answer and cross-claim to the complaint upon all defendants via ECF and first -class mail. (*See Doc. No. 6.*) To the best of my knowledge, the service accomplished by first-class mail upon Northstate was not returned.

4. The bank asserted a cross-claim against Northstate seeking (a) a money judgment against Northstate equal to the sums due under those certain promissory notes identified in the bank's cross-claim; (b) a determination that to the extent Northstate was deemed to have any interest in the assets indentified in the trustee's complaint, the bank's interest in those assets was senior to any interest claimed or held by any of the parties to the adversary proceeding; and (c) an order entitling the bank, upon request, to an order for claim an delivery as to Northstate.

5. More than 21 days have passed since the date on which the bank served Northstate with the bank's answer and cross-claim.

6. To date, Northstate has failed to answer or otherwise defend against the bank's cross-claim.

B. Identification of Northstate

7. To the best of my knowledge, information and belief, Northstate's full name and address is: Northstate Financial Corporation, 500 Ford Road, St. Louis Park, MN 55426. To the best of my knowledge, information and belief, Northstate is not now in the military service or of incompetent status.

C. MERITS OF ACTION

8. As alleged in the answer and cross-claim, and deemed admitted, Northstate is indebted to the Bank pursuant to the terms of those certain loan documents identified in the cross-claim. (*See Doc. No. 6 Cross-Claim ¶¶4-6.*)

9. As alleged in the answer and cross-claim, and deemed admitted, to secure all obligations owing or to become owing from Northstate to the bank, Northstate executed and delivered to the bank a security agreement that granted the bank a lien in the assets described therein. (*See Doc. No. 6 Cross-Claim ¶7.*)

10. As alleged in the answer and cross-claim, and deemed admitted, Northstate defaulted under the terms of the loan documents identified in the cross-claim. (*See Doc. No. 6 Cross-Claim ¶10.*)

11. As alleged in the answer and cross-claim, and deemed admitted, as a result of Northstate's defaults under the loan documents, the bank and Northstate entered into the forbearance agreement. (*See Doc. No. 6 Cross-Claim ¶12.*)

12. As alleged in the answer and cross-claim, and deemed admitted, Northstate is in default under the forbearance agreement. (*See Doc. No. 6 Cross-Claim ¶13.*)

13. As alleged in the answer and cross-claim, and deemed admitted, as of April 17, 2009, the following sums are due and owing under loan documents:

<u>Note</u>	<u>Principal</u>	<u>Interest</u>
Note 1	\$499,355.53	\$1,791.17
Note 2	\$1,000,000.00	\$3,583.32

(*See Doc. No. 6 Cross-Claim ¶15.*)

14. As alleged in the answer and cross-claim, and deemed admitted, in addition to the above sums, Northstate is liable to the bank for any and all attorneys' fees and costs incurred by the bank in connection with this matter.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Dated: July 16, 2010

s/Jacob B. Sellers
Jacob B. Sellers

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Adv. Case No. 10-05011

Plaintiff,

v.

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Rosedale Leasing, LLC, and Bremer Bank, N.A.

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2010, I caused the following documents:

1. APPLICATION FOR DEFAULT JUDGMENT AGAINST CROSS-CLAIM DEFENDANT NORTHSTATE FINANCIAL CORPORATION;

2. DECLARATION OF JACOB B. SELLERS IN SUPPORT OF CROSS-CLAIM PLAINTIFF'S APPLICATION FOR DEFAULT JUDGMENT; and

3. FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

to be filed electronically with the Clerk of Court through ECF, and that ECF will send an e-notice of electronic filing to the following persons:

- Daniel C. Beck dbeck@winthrop.com, tcooke@winthrop.com
- Ralph Mitchell rmitchell@lapplibra.com, jpipp@lapplibra.com
- Jacob B. Sellers jsellers@winthrop.com,
jahlers@winthrop.com;tcooke@winthrop.com

I further certify that a copy was sent via U.S. Mail to the following non-ECF participants:

Northstate Financial Corporation
500 Ford Road
St. Louis Park, MN 55426

Rosedale Leasing, LLC
500 Ford Road
St. Louis Park, MN 55426

Dated: July 16, 2010

WINTHROP & WEINSTINE, P.A.

By: s/Jacob B. Sellers
Daniel C. Beck, #192053
Jacob B. Sellers #348879

225 South Sixth Street, Suite 3500
Minneapolis, MN 55402-4629
(612) 612-6400

Attorneys for Defendant Bremer Bank, N.A.

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FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This adversary proceeding came before the Court on the application of Cross-Claim Plaintiff Bremer Bank, N.A. pursuant to Local Rule 7055-1 for entry of default judgment against Cross-Claim Defendant Northstate Financial Corporation. Based on the application, the declaration of Jacob B. Sellers and exhibits thereto, the bank's cross-claim and the exhibits thereto, and all the papers, pleadings, and things on file herein, the Court makes the following Findings of Fact, Conclusions of Law and Order for Judgment.

FINDINGS OF FACT

1. This adversary proceeding was commenced on March 17, 2010, by Randall L. Seaver in his capacity as trustee of the above-captioned Debtor. On March 25, 2010, the trustee filed an amended complaint.

2. On April 16, 2010, the bank filed and served its answer and cross-claim to the complaint in which the bank asserted a cross-claim against Northstate Financial Corporation.

3. The deadline for Northstate to answer or otherwise respond to the complaint was May 7, 2010.

4. More than 21 days have passed since the date on which the bank served Northstate with the bank's answer and cross-claim.

5. To date, Northstate has failed to answer or otherwise defend against the bank's cross-claim.

6. On July 12, 2010, the Court approved the stipulation between the bank and the trustee regarding the distribution of proceeds generated from the trustee's liquidation of assets in Northstate's possession and identified in the trustee's complaint.

7. As of April 17, 2009, the following sums are due and owing under the loan documents:

<u>Note</u>	<u>Principal</u>	<u>Interest</u>
Note 1	\$499,355.53	\$1,791.17
Note 2	\$1,000,000.00	\$3,583.32

CONCLUSIONS OF LAW

1. The bank properly served and filed its answer and cross-claim on Northstate.
2. More than 21 days have passed since the date on which the bank served Northstate with the bank's answer and cross-claim.
3. Northstate has not served or filed an answer or otherwise responded to the bank's cross-claim.
4. Northstate is in default for its failure to timely answer or otherwise respond to the bank's cross-claim.

ORDER

5. The application for default judgment is granted.
6. A money judgment is hereby entered in favor of the bank and against Northstate in the amount of \$1,504,730.00, which amount represents principal and interest due and owing under the loan documents as of April 17, 2009.
7. The bank is entitled, upon request, to an order for claim and delivery as to Northstate and any of its assets not subject to the stipulation between the bank and the trustee.

Dated: _____, 2010

United States Bankruptcy Judge